

Matthew Strugar, State Bar No. 232951
Law Office of Matthew Strugar
3435 Wilshire Boulevard, Suite 2910
Los Angeles, CA 90010
(323) 696-2299
matthew@matthewstrugar.com

Attorney for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ADRIAN RISKIN,

Petitioner,

vs.

HOLLYWOOD PROPERTY OWNERS ALLIANCE, a
non-profit corporation,

Respondent.

Case No. BS166500

**Petitioner Adrian Riskin's Memorandum of
Points and Authorities in Support of Petition
for Writs of Mandate Directed to the
Hollywood Property Owners Alliance**

*[Filed concurrently with Compendium of Evidence
with Declarations of Adrian Riskin, Matthew
Strugar, Enrique Rivera, John Malpede, and Eric
Ares.]*

Trial Date: February 13, 2017
Time: 1:30 p.m.
Location: Department 85

Petition Filed: Nov. 28, 2016
Am. Petition Filed: May 5, 2017

Notice is hereby given that on February 13, 2018, at 1:30 p.m. in Department 85 of the Los Angeles Superior Court, located at 111 North Hill Street, Los Angeles, California 90012, the Court will hold a hearing on the Verified First Amended Petition of Adrian Riskin for writs of mandate directed to the respondent Hollywood Property Owners Alliance (HPOA), pursuant to the California Public Records Act (Gov't Code § 6250 *et seq.*) (CPRA), California Code of Civil Procedure § 1085 *et seq.*, and Article I, Section 3 of the California Constitution. The Petition asks the Court for relief on the following grounds:

1 1. HPOA has violated the CPRA by improperly refusing to produce public records. More
2 specifically:

3 A. HPOA has refused to produce emails between HPOA and the City of Los Angeles,
4 private security contractor Andrews International, and the Hollywood Entertainment
5 District Business Improvement District from January 1, 2016 through March 17, 2016,
6 which Riskin requested on March 17, 2016. *See* Memorandum, Section I.B.

7 B. HPOA has refused to produce daily logs, arrest reports, photographs, videos,
8 bodycam recordings, and audio recordings produced by HPOA private security contractor
9 Andrews International from January 1, 2016 through June 15, 2016, which Riskin
10 requested on August 19, 2016, or has allowed a third-party to control disclosure of public
11 records. *See* Memorandum, Section II.

12 C. HPOA has refused to produce two documents, both of which were attachments to
13 an email, in an electronic format, which Riskin requested on January 6, 2016. *See*
14 Memorandum, Section III.

15 D. HPOA has refused to produce a list of property owners in the Business
16 Improvement Districts that HPOA manages, and their contact information, which Riskin
17 requested on April 23, 2016. *See* Memorandum, Section IV.

18 2. That portion of HPOA's Document Retention Policy which states that email messages are
19 not records unless marked as records is *ultra vires* and contravenes the CPRA. *See* Memorandum,
20 Section I.A.

21 Riskin respectfully requests that the Court grant him the following relief on his claims under the
22 CPRA:

23 1. Issue a writ of mandate ordering HPOA to immediately produce all requested non-exempt
24 records that have not yet been produced.

25 2. Award Riskin his attorney fees and costs incurred in bringing this action, pursuant to
26 Government Code § 6259, and/or pursuant to Code of Civil Procedure § 1021.5.
27
28

1 Riskin respectfully requests that the Court grant him the following relief on his claims under his
2 mandamus claim pursuant to Code of Civil Procedure § 1085:

- 3 1. Issue a writ of mandate setting aside the March 2016 amendment to HPOA's Document
4 Retention Policy, which states that email messages are not records unless marked as records.
5 2. Award Riskin his attorney fees and costs incurred in bringing this action, pursuant to Code
6 of Civil Procedure § 1021.5.

7 Riskin's request is based on this Notice; on the attached Memorandum of Points and Authorities;
8 on the concurrently-submitted Compendium of Evidence, including the Declarations of Adrian Riskin,
9 Matthew Strugar, John Malpede, Enrique Rivera, and Eric Ares, as well as the exhibits attached to those
10 declarations; on Riskin's Verified First Amended Petition for Writ of Mandate, as well as on the exhibits
11 attached to the Verified First Amended Petition; on all pleadings, files, and records in this action; and on
12 such other argument as this Court may receive at the hearing on the petition.

13
14 Dated: December 29, 2017

Respectfully submitted,

15
16 _____
17 Matthew Strugar
18 Attorney for Petitioner
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

Factual Background	1
I. Riskin Seeks to Bring Some Measure of Democratic Accountability to HPOA’s Actions.	1
II. Riskin Publishes His Investigative Work and Informs Other Advocates.....	4
Argument.....	5
I. HPOA’s Email Production Policy is <i>Ultra Vires</i> and HPOA Wrongfully Refused to Produce Records Pursuant to the Policy	5
A. The Email Production Policy is <i>Ultra Vires</i>	7
B. HPOA Violated the CPRA by Withholding Emails Pursuant to the Policy	8
II. HPOA Wrongfully Refused to Produce Records Related to the BID Patrol	8
III. HPOA Wrongfully Refused to Produce Records in Response to the Native Electronic Format Request	10
IV. HPOA Wrongfully Refused to Produce Records of Contact Information for BID Property Owners	12
V. HPOA’s Existing CPRA Policies Are Adequate to Deal with Any Concerns regarding the Volume of CPRA Requests	14
Conclusion	15

TABLE OF AUTHORITIES

CASES

<i>City of San Jose v. Superior Court</i> (2017) 2 Cal. 5th 608	9, 10
<i>FCC v. AT&T, Inc.</i> (2011) 562 U.S. 397	13
<i>Hansen v. California Bank</i> (1936) 17 Cal.App.2d 80	8
<i>San Gabriel Tribune v. Superior Court</i> (1983) 143 Cal.App.3d 762	13
<i>Sims v. CIA</i> (D.C. Cir. 1980) 642 F.2d 562	13
<i>State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.</i> (2016) 248 Cal.App.4th 349	8
<i>Wash. Post Co. v. Dep't of Agric.</i> (D.D.C. 1996) 943 F. Supp. 31	13

STATUTES

5 USC § 552	13
Bus. & Prof. Code § 7512	3
Bus. & Prof. Code § 7520	3
Bus. & Prof. Code § 7521	3
Gov't Code § 6252	7, 9
Gov't Code § 6253	9
Gov't Code § 6253.9	10, 11
Gov't Code § 6254	13, 14
Gov't Code § 6254.21	14

1	Gov't Code § 6254.3	14
2	Gov't Code § 6255	14
3	Gov't Code § 6270	10
4	Los Angeles Municipal Code § 52.34.....	3
5	Penal Code § 653b	2
6	Sts. & Hy. Code § 36600	1
7	Sts. & Hy. Code § 36612	1, 8
8	Sts. & Hy. Code § 36622	12
9	Sts. & Hy. Code § 36630	12
10	Sts. & Hy. Code § 36670	12
11	Wel. & Inst. Code § 5345	3
12		
13		
14		
15		

OTHER AUTHORITIES

16		
17	Bianca Barragan, <i>Who brought down the Skid Row Neighborhood Council? Business improvement</i>	
18	<i>districts and some developers opposed the effort</i> , Curbed Los Angeles, June 21, 2017	5
19	Jason McGahan, <i>Who Killed the Skid Row Neighborhood Council?</i> , LA Weekly, June 21, 2017	5
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 Not so with a parapolice force. The BID Patrol is privately operated and report only to HPOA, which
2 is designed to be exclusively paid for—and, as a consequence, exclusively represent the interests of—
3 property owners.

4 Concerned about the interests of those who do not own property in the district, Riskin set out to learn
5 more about the operations of the property owners’ associations generally, HPOA specifically, and to locate
6 potential political avenues of redress. Riskin Decl. ¶ 8. He learned that HPOA and other property owners’
7 associations are subject to the CPRA and the Brown Act, and began requesting records and attending
8 meetings. *Id.*

9 Riskin became aware the BID Patrol was ordering adults who were unaccompanied by children to
10 leave Selma Park, one of the only public parks within the BID and one of the only places homeless people
11 can sit down without being shooed off, under threat of arrest. Riskin Decl. ¶ 48. And the BID Patrol was
12 arresting others just for being there. Riskin Decl. ¶ 49. Riskin came to learn that these citizens arrests were
13 for purported violations for Penal Code § 653b(a), which prohibits loitering “about any school or public
14 place at or near which children attend or normally congregate” after being asked to leave by the “chief
15 administrative official of that school or, in [his or her] absence . . . by a member of the security patrol of
16 the school district who has been given authorization, in writing, by the chief administrative official of that
17 school[.]” *Id.* Selma Park had a sign alerting adults who were unaccompanied by children that their
18 presence was prohibited, and cited section 653b(a). *Id.* Riskin made requests to the City Attorney’s office
19 and learned that the office was not filing charges on the BID’s Selma Park arrests. Riskin Decl. ¶ 50.

20 Riskin sent a records request to LAUSD, which had no records of any such authorization of any chief
21 administrative officials of the nearby Selma Avenue Elementary School to any member of a security patrol
22 related to Selma Park. Riskin Decl. ¶ 51. From another records request, Riskin received an email from
23 HPOA Executive Director Kerry Morrison to staff from City Council District 13 (CD-13) seeking CD-
24 13’s help for an event, or “some type of celebration,” to “reclaim” the park for the children. Riskin Decl.
25 ¶ 52, Ex. 24. He made another request to the Department of Recreation and Parks for information related
27 to the “children’s only” nature of the park. Riskin Decl. ¶ 53. The Department confirmed that Selma Park
28 was open to the public and that it would ensure that the sign was removed. *Id.*

1 After the sign was removed, the unlawful BID Patrol arrests and orders to leave the park abated. Riskin
2 Decl. ¶ 54. But it took a stack of public records requests to a variety of entities to prove what should have
3 been obvious—that adults have the right to sit in chairs in a public park without being harassed or arrested
4 by an armed private security force working for private property owners.

5 As part of his investigation in HPOA’s BID Patrol, Riskin discovered that the City of Los Angeles
6 had abandoned enforcement of Los Angeles Municipal Code section 52.34 with respect to BID patrol
7 officers. Riskin Decl. ¶ 54. Section 52.34 requires security services which operate patrols on public streets
8 to register with the Los Angeles Police Commission and to have their officers undergo background checks
9 as part of a permitting process. *Id.* Riskin wrote to the Police Commission and, soon after, the City resumed
10 enforcement and required BID Patrol officers to be permitted and pass background checks. *Id.* Some of
11 the then-existing BID Patrol officers failed the newly-required background checks. *Id.*

12 Riskin has also submitted a complaint to the City Ethics Commission related to HPOA and other
13 property owners’ associations’ apparent noncompliance with the Los Angeles Municipal Lobbying
14 Ordinance in relation to City ordinances regulating street vending and other issues affecting poor people.
15 Riskin Decl. ¶ 56.

16 Riskin conducted another inquiry related to the BID Patrols after he discovered that they, at HPOA’s
17 direction, were conducting investigations of homeless Hollywood residents for proceedings under Laura’s
18 Law (Wel. & Inst. Code § 5345 *et seq.*). Riskin Decl. ¶¶ 57-59. Laura’s Law provides a mechanism to
19 impose mandatory involuntary outpatient treatment on people. The Private Investigators Act (Bus. & Prof.
20 Code § 7512 *et seq.*) requires licensing by the California Bureau of Security and Investigative Services
21 for any person whose employment involves “[s]ecuring evidence to be used before any court, board,
22 officer, or investigating committee.” Bus. & Prof. Code §§ 7521(e); 7520. Riskin could not locate any
23 record that the BID Patrol officers who were gathering the evidence to be used in the Laura’s Law
24 proceedings are licensed private investigators. Riskin Decl. ¶ 58. Riskin drafted a report detailing these
25 violations of the Private Investigators Act to the California Bureau of Security and Investigative Services
27 requesting that the BSIS take enforcement action. Riskin Decl. ¶ 59. This investigation and complaint,
28 too, were a result of multiple public records requests to multiple entities.

1 None of these examples are directly at issue in this lawsuit. But throughout this litigation, HPOA has
2 made much of Riskin's supposed motives or purposes in making CPRA requests to HPOA and sought to
3 paint him as both frivolous and unhinged, seeking to harass HPOA without any legitimate end. The Court
4 has indicated that, if true, Riskin's lack of legitimate purposes may be a basis to deny him relief, and
5 permitted HPOA to take a deposition of Riskin related to HPOA's characterization of him as an abusive
6 requester.

7 These examples provide an illustration of the extent of the investigation required to uncover this
8 unlawful activity, as well as the extent of the harm. These are not trivial matters. In one, a private security
9 force was running people out of public parks (and in some cases arresting them) for being homeless.
10 Another involves a private security force gathering evidence to force involuntary treatment on homeless
11 people. And another involved private security operating without the oversight of a public commission that
12 is mandated by law—all at the direction of unaccountable and anonymous wealthy property owners and
13 outside of democratic political channels. HPOA's opacity makes the CPRA and the Brown Act the only
14 avenues of obtaining information from HPOA about its operations.

15 **II. Riskin Publishes His Investigative Work and Informs Other Advocates**

16 Riskin authors a blog where he details his investigations into the activities of HPOA and other property
17 owners' associations and publishes the public records that he receives in response to his requests. Riskin
18 Decl. ¶¶ 2-3. In order to attract readers, Riskin employs rhetoric, calls to action, and colorful language to
19 rabble-rouse, consistent with the tradition of the First Amendment. *Id.* Contrary to HPOA's
20 characterization of the blog, Riskin does not run it harass HPOA, but to inform the public about HPOA's
21 wrongdoing. *Id.*

22 A filmmaker working on a documentary about a dispute between a charitable organization feeding
23 homeless residents of Los Angeles and the BID that seeks to stop them studied Riskin's website to gain
24 an understanding of the interplay between the BID, the City Council district, and the efforts to stymie the
25 charity from feeding people. Rivera Decl. ¶¶ 2-5. The filmmaker also met with Riskin to gain a more
26 detailed understanding of the interplay between these actors. Rivera Decl. ¶ 6.

27 The Founding Director of the Los Angeles Poverty Department, an arts group established for residents
28

1 of Skid Row in 1985, also uses Riskin’s blogs to uncover the machinations working against the homeless
2 residents of Skid Row. Malpede Decl. ¶¶ 1-6. Riskin provides presentations to Skid Row residents through
3 the Los Angeles Poverty Department on his research into the role of the BIDs in the lives of homeless
4 residents. Malpede Decl. ¶ 7.

5 Riskin’s work also informs the advocacy of the Los Angeles Community Action Network, an
6 advocacy organization for people experiencing poverty in Los Angeles. Ares Decl. ¶¶ 2-8. The
7 organization cites Riskin’s work as assisting on its campaign and community-lawyering projects, and
8 admits that without Riskin’s website the organization would likely never have access to this information.
9 Ares Decl. ¶¶ 5, 7.

10 Riskin’s work has been cited by journalists seeking to uncover the workings of various BIDs in the
11 city. See Jason McGahan, *Who Killed the Skid Row Neighborhood Council?*, LA Weekly, June 21, 2017,
12 <http://bit.ly/2sYsWz>; Bianca Barragan, *Who brought down the Skid Row Neighborhood Council?*
13 *Business improvement districts and some developers opposed the effort*, Curbed Los Angeles, June 21,
14 2017, <http://bit.ly/2o721zO>.

15 ARGUMENT¹

16 This petition involves four CPRA requests to HPOA and a contention that an HPOA policy that
17 purports to govern how HPOA produces records under the CPRA is *ultra vires*.

18 **I. HPOA’s Email Production Policy is *Ultra Vires* and HPOA Wrongfully Refused to Produce** 19 **Records Pursuant to the Policy**

20 In March 2016, HPOA instituted a policy that purports to give HPOA officials the power to unilaterally
21 declare existing, retained email as unavailable for production under the CPRA. The policy declares that
22 emails are “generally considered ‘transitory’ documents (works-in-progress), and therefore are *not*
23 *records of the Association.*” (emphasis added). Strugar Decl. Ex. 2 p. 7.

24 The policy provides exceptions to its general rule. Email that HPOA determines are “particularly
25 important” are “official records.” *Id.* The policy states that HPOA will retain these “official records” email
26

27
28 ¹ The legal standards for issuance of a writ of mandate are well-known to the Court. In the interest of brevity and space, Riskin omits a detailed recitation of them here.

1 either in a hard copy format or in an electronic archival system. *Id.* The policy also establishes that the
2 “particularly important” emails that HPOA designates as “official records . . . may be subject to disclosure
3 in response to a request for public records.” *Id.*

4 In other words, HPOA asserts the authority to declare existing/retained/undeleted email as off limits
5 from the CPRA simply by labeling email presumptively “transitory” documents . . . and therefore . . . *not*
6 *records of the Association.*” *Id.* (emphasis added).

7 On March 17, 2016, Riskin made a CPRA request to HPOA seeking emails to or from anyone at the
8 domain hollywoodbid.org, and the domains or subdomains of lacity.org, andrewsinternational.com, or
9 hollywoodbid.org from January 1, 2016 through March 17, 2016. Riskin Decl. Ex. 1. Six weeks later,
10 HPOA provided records responsive to this request. Riskin Decl. ¶ 10. Every email that HPOA produced
11 had been flagged as “Archive for Records,” demonstrating that HPOA considered its new policy to apply
12 retroactively. *Id.*

13 Riskin noticed that at least one record that he had received from another CPRA request to the City of
14 Los Angeles was responsive to his March 17, 2016 request but not produced by HPOA. Riskin asked
15 HPOA why it did not produce the record in response to his request. Riskin Decl. ¶ 11, Ex. 2. He did not
16 receive a response to this inquiry. Riskin Decl. ¶ 12.

17 Riskin then sent a CPRA request to Dan Halden, the Hollywood field deputy for Los Angeles City
18 Council District 13, seeking emails between District 13 and anyone at HPOA from January 1, 2016, and
19 April 23, 2016. Riskin Decl. ¶ 13, Ex. 3. Among the documents that Halden produced in response to this
20 request were *dozens* of emails between HPOA staff and District 13 that were responsive to Riskin’s March
21 17, 2016 request to HPOA, but had not been produced by HPOA. Riskin Decl. ¶ 14, Ex. 4. Among these
22 was a February 10, 2016 email from Ms. Morrison to, among others, Dan Halden at his lacity.org email
23 account, and an April 10, 2016 email in which Morrison forwarded the February 10 email to Halden again.
24 Riskin Decl. ¶ 18, Ex. 4 pp. 10-12.

25 The fact that Morrison was able to forward her original February 10, 2016 email on April 10, 2016
27 demonstrates that HPOA possessed the February 10 email when Riskin made his request in the interim
28 (on March 17, 2016). Morrison admits as much. Strugar Decl. Ex. 1 (Morrison Tr. 71). HPOA simply did

1 not produce it because it had not designated the email as “an official record.”

2 Riskin asked HPOA why it had not produced these emails and provided the February 10, 2016 email
3 as one example. Riskin Decl. ¶¶ 16, 19, Exs. 5, 6. HPOA did not respond to these inquiries, but *did* produce
4 the February 10 email in response to a subsequent Riskin CPRA request (even though the email was not
5 within the date range of that request), once again confirming that it possessed the email all along. Riskin
6 Decl. ¶¶ 17, 20-22, Exs. 7, 8. By the time HPOA produced it, it had been flagged “Archive for Records.”
7 Riskin Decl. ¶ 22, Ex. 8.

8 In her deposition, HPOA Executive Director Morrison confirmed that HPOA does “not produce
9 transitory documents.” Strugar Decl. Ex. 1 (Morrison Tr. 58). She also confirmed that in responding to
10 CPRA requests, her staff produces only those documents that they have taken the affirmative step to mark
11 “archive for records.” Strugar Decl. Ex. 1 (Morrison Tr. 60). She confirmed that the policy was enacted
12 in response to Riskin’s requests for HPOA’s email. Strugar Decl., Ex. 1 (Morrison Tr. 52). And she
13 confirmed that the February 10, 2017 email was produced in response to Riskin’s follow-up request for
14 email, but not in response to his March 10, 2017 request, because someone had marked that email “Archive
15 for Records” in the interim. Strugar Decl. Ex. 1 (Morrison Tr. 72).

16 **A. The Email Production Policy is *Ultra Vires***

17 HPOA presumptively exempts all of its email from being subject to the CPRA, declaring email
18 “transitory” and “not records of the association.” If, and only if, an HPOA employee designates a
19 particular email an “official record” does HPOA consider that email as a “record” that is subject to
20 production under the CPRA.

21 This distinction between “transitory” and “official” records directly contradicts the definition of
22 “public records” in the CPRA. The CPRA defines public records as “any writing containing information
23 relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local
24 agency regardless of physical form or characteristics.” Gov’t Code § 6252(e), (g). The statute says nothing
25 about “transitory” versus “official” emails and provides no provision whereby an entity subject to the
26 CPRA can declare a type of record as presumptively “not records” unless and until the entity designates
27 it as an “official record.”
28

1 The CPRA would serve little function if it permitted entities to pick and choose those records that it
2 would turn over in response to future public records requests. By only producing those emails that it
3 affirmatively marks “Archive for Records,” that is exactly the authority that HPOA claims.

4 A writ of mandate lies to compel a respondent’s clear, present, and usually ministerial duty. *State*
5 *Comp. Ins. Fund v. Workers’ Comp. Appeals Bd.* (2016) 248 Cal.App.4th 349, 370. An *ultra vires* act is
6 one that is beyond the scope of power allowed by law and as such is *void ab initio*. See *Hansen v.*
7 *California Bank* (1936) 17 Cal.App.2d 80, 100.

8 HPOA has a duty to provide public records pursuant to the CPRA. Sts. & Hy Code § 36612. This duty
9 is not discretionary. HPOA’s email production policy contravenes HPOA’s duty under the CPRA.
10 Because HPOA’s policy purports to allow it to withhold public records from production pursuant to CPRA
11 requests, the policy is *ultra vires* and in violation of the CPRA.

12 **B. HPOA Violated the CPRA by Withholding Emails Pursuant to the Policy**

13 Because HPOA’s policy allowed it to withhold public records from CPRA requesters, each email
14 HPOA withheld pursuant to the policy that was responsive to either Riskin’s March 17, 2016 request or
15 his April 21, 2016 request was a violation of CPRA. In response to both requests, HPOA only produced
16 email that was flagged “Archive for Records.” Riskin Decl. ¶ 10. Documents produced by Dan Halden at
17 Council District 13 revealed that HPOA withheld scores of responsive emails, and that was only for emails
18 between HPOA and the 13th District. Riskin Decl. Ex. 3. By not producing those emails that were
19 responsive to Riskin’s March 17, 2016 request and his April 21, 2016 request, and not marked ‘Archive
20 for Records,’ HPOA violated the CPRA.

21 Riskin requests that this Court find that HPOA violated the CPRA and require it to produce the
22 requested emails.

23 **II. HPOA Wrongfully Refused to Produce Records Related to the BID Patrol**

24 Since 2007, HPOA has contracted with private security vendor Andrews International to conduct BID
25 patrols in its district. Strugar Decl. Ex. 1 (Morrison Tr. 12-13). The BID Patrol contract between HPOA
26 and Andrews prior to June 15, 2016 stated that the work product that Andrews generated under the contract
27 was “the property of the Client [i.e., HPOA] and shall be delivered to the Client upon Client’s request.”
28

1 Strugar Decl. Ex. 3 p. 3. Prior to June 15, 2016, HPOA regularly produced documents created by Andrews
2 in response to Riskin’s CPRA requests. Riskin Decl. ¶ 23.

3 Despite the fact that the existing contract between HPOA and Andrews was not set to terminate until
4 April 30, 2018, on June 16, 2016, HPOA and Andrews entered into a revised contract in which HPOA
5 relinquished ownership of Andrews’ work product. Strugar Decl. Ex. 4 at pp. 3-4.

6 HPOA admits that it sought to amend the contract specifically to keep these records away from CPRA
7 requesters like Riskin. Strugar Decl. Ex. 1 (Morrison Tr. 100). Among the records privatized by the
8 amended contract were the daily logs, arrest reports, photographs, videos, and bodycamera recordings that
9 Riskin had regularly sought and received in the past. Riskin Decl. ¶ 23.

10 On August 29, 2016, Riskin made a CPRA request to HPOA for daily logs, arrest reports, photographs,
11 videos, bodycam recordings, and audio recordings produced by Andrews from January 1, 2016 through
12 August 29, 2016. Riskin Decl. ¶ 24, Ex. 9. HPOA did not produce any daily logs, arrest reports, video or
13 audio recordings during this period. Riskin Decl. ¶ 25.

14 Public records include those records “prepared, owned, used, or retained” by an entity subject to the
15 CPRA. Gov’t Code § 6252(e). While records must be “in the possession” of the entity subject to the
16 CPRA, Gov’t Code § 6253(e), ‘possession’ includes actual and constructive possession. *City of San Jose*
17 *v. Superior Court* (2017) 2 Cal. 5th 608, 623.

18 Under the contract that was operative prior to June 16, 2016, HPOA owned Andrew’s work product.
19 Riskin’s request sought Andrews’ work product dating back to January 1, 2016. Even if the contract
20 amendment successfully insulated Andrews’ work product *after* the June 16, 2016 amendment, the work
21 product from January 1, 2016 to the June 16, 2016 amendment is owned by HPOA.² Because HPOA
22 “owned” those records, they are public records and should have been produced in response to Riskin’s
23 request. Gov’t Code § 6252(e).

24
25
26
27 ² Riskin’s Amended Petition also sought post-amendment records produced by Andrews. Am. Pet. ¶¶ 45-
28 48. In light of the Court’s November 16, 2017 order finding that HPOA does not own or have constructive
possession of Andrews’ post-amendment work product, Riskin does not seek the post-amendment work
product through this motion.

1 HPOA appears to contend that the contract amendment worked to retroactively convert the pre-
2 amendment work product into Andrews' private property. Strugar Decl. Ex. 1 (Morrison Tr. 104-105).
3 But this is also a violation of the CPRA. "The [CPRA]'s clear purpose is to prevent an agency from
4 evading its disclosure duty by transferring custody of a record to a private holder and then arguing the
5 record falls outside CPRA because it is no longer in the agency's possession." *City of San Jose, supra*, 2
6 Cal. 5th 608, at 623. The CPRA "prohibits agencies from attempting to evade CPRA by transferring public
7 records to an intermediary not bound by the Act's disclosure requirements." *Id.* (citing Gov't Code
8 § 6270). According to HPOA's retroactive theory, Andrews' pre-amendment work product—records that
9 HPOA owned—that were public records on June 15, 2016 were transferred into private control the next
10 day. This is the exact scenario prohibited by Government Code section 6270.

11 Accordingly, Riskin requests that this Court find that HPOA violated the CPRA and require it to
12 produce the requested daily logs, arrest reports, photographs, videos, bodycam recordings, and audio
13 recordings from January 1, 2016 through June 15, 2016.³

14 **III. HPOA Wrongfully Refused to Produce Records in Response to the Native Electronic Format**
15 **Request**

16 On November 23, 2015, Riskin made a CPRA request to HPOA for "emails between HPOA or Central
17 Hollywood Commission and the Hollywood Chamber" within a six-month time frame, as well as "all
18 emails sent or received by anyone on HPOA staff and anyone at A/I [Andrews International]" within a
19 49-day time frame. Riskin Decl. ¶ 26, Ex. 10. Given HPOA's repeated reluctance to produce email in the
20 "electronic format in which it holds the information," Gov't Code § 6253.9(a)(1), Riskin's request stated,
21 "I'd prefer all these in the electronic format in which they're stored, but I won't make a fuss over PDFs if
22 that's easier for you all to supply." Riskin Decl. Ex. 10.

23 Six weeks later, HPOA produced responsive emails, as well as the files attached to those emails, in a

24 ³ While the amended contract between HPOA and Andrews purports to vest ownership of Andrews' work
25 product under the contract with Andrews, HPOA maintains access to Andrews work product on request.
26 According to the revised contract, "[w]ork product shall not be released publicly by [Andrews] without
27 the prior written approval of [HPOA]." Strugar Decl. Ex. 4 p. 4. While HPOA no longer retains sole
28 ownership of Andrews' work product generated pursuant to the contract, that work product can still be
released to HPOA (or publicly) with HPOA's permission.

1 PDF format that appeared to be records that were first printed to paper and then scanned to PDF, as
2 opposed to being converted directly from the native format to PDF format. Riskin Decl. Ex. 11.

3 The next day (January 6, 2016), Riskin requested two documents—both of which were attachments to
4 emails in HPOA’s scanned-to-PDF production—in their native format. Riskin Decl. ¶ 28, Ex. 12. One
5 was in a Microsoft Excel format (Chronic Offenders 2007-2013.xlsx), the other in Microsoft Word format
6 (2013 ARRESTS.docx). *Id.* At Riskin’s request, the City Attorney’s office runs a list of the BID Patrol’s
7 arrestees to determine whether the arrests result in trials or guilty pleas, but only if Riskin submits the
8 information in certain electronic formats. Riskin Decl. ¶ 29. Riskin uses this information to show that BID
9 Patrol’s arrests results in far fewer convictions or guilty pleas than average to support his contention that
10 the BID Patrol’s arrests are primarily aimed at harassment. *Id.* Riskin attempted to convert the information
11 from HPOA’s scan-to-PDF files, but errors in the conversion created unreliable results when the City
12 Attorney’s office ran the names. *Id.* Having the documents in their native electronic format would create
13 more reliable data and results. *Id.*

14 Receiving no response after three months, Riskin followed up in April, and again in June, before
15 HPOA finally responded. Riskin Decl. ¶¶ 30-31, Exs. 13-14. HPOA’s response to Riskin’s request for the
16 documents in their native (Excel and Word) formats was that “the data is attached to the email,” (in other
17 words, that HPOA already produced the documents in a PDF format) and that it had no other records to
18 produce. Riskin Decl. ¶ 32, Ex. 15. Riskin reiterated that he sought the two specific documents in their
19 *native* formats. Riskin Decl. Ex. 16. Receiving no response, he followed up again to no avail before brining
20 suit. Riskin Decl. ¶¶ 34-36, Ex. 16.

21 No exemption applies to this data. HPOA admitted as much by producing the data in the physical-to-
22 PDF format. Both documents were attached to an email that HPOA had retained, as evidenced by its
23 production of the email in response to Riskin’s initial request. The CPRA requires that “[t]he agency shall
24 make the information available in any electronic format in which it holds the information.” Gov’t Code
25 § 6253.9(a)(1). HPOA refused to do so.

27 Accordingly, Riskin requests that this Court find that HPOA violated the CPRA and require it to
28 produce the requested files.

1 **IV. HPOA Wrongfully Refused to Produce Records of Contact Information for BID Property**
2 **Owners**

3 Riskin seeks to disestablish the BIDs that HPOA manages, or seek their nonrenewal. Riskin Decl.
4 ¶ 37. The Property and Business Improvement District Law of 1994 creates two methods by which the
5 city council can notice a hearing on a BID's disestablishment: 1) if the city council finds there "has been
6 misappropriation of funds, malfeasance, or a violation of law in connection with the management of the
7 district"; or 2) if the district's property owners (or their representatives) who pay 50% or more of the
8 assessments submit a written petition, within a 30-day window each year, to the city council. Sts. & Hy.
9 Code § 36670(a). If the assessed property owners so petition, the city council holds a hearing. Sts. & Hy.
10 Code § 36670(b). These are the sole methods of disestablishing a BID under the law.

11 The law also states that a BID's term may not exceed ten years, Sts. & Hy. Code § 36622(h), but that
12 term can be renewed at the expiration of the term. Sts. & Hy. Code § 36630. Both of the BID districts
13 HPOA manages are up for renewal in 2018.

14 Riskin does not own property in the districts and does not pay assessments, so he cannot petition the
15 city council himself. Riskin Decl. ¶ 39. He would like to reach out to the property owners who pay the
16 assessments to provide them with his evaluation of HPOA's failings, and encourage them to gather a
17 disestablishment petition and present it to the City Council as required by the Property and Business
18 Improvement District Law, or to oppose their renewal. *Id.*

19 To this end, Riskin made a CPRA request to HPOA on April 23, 2016, for a list of property owners in
20 the two BIDs HPOA manages, along with contact information. Riskin Decl. ¶ 40, Ex 18. This is
21 information that HPOA's contract with the City requires that HPOA keep for the Hollywood
22 Entertainment District, and the contract requires HPOA to produce this information to any assessed
23 property owner upon request. Riskin Decl. ¶ 41. HPOA admits it maintains this information. Strugar Decl.
24 Ex. 1 (Morrison Tr. at 22, 31).

25 On May 20, 2016, HPOA provided Riskin a response consisting of a list of property parcel numbers
26 in the BID and instructed Riskin to obtain the owners' contact information himself from L.A. County.
27 Riskin Decl. ¶¶ 42-43, Exs. 19-20.

1 After Riskin objected to this response, HPOA asserted that these two lists were the only non-exempt
2 responsive records it possessed and that the contact information it maintained was exempt, citing
3 “Government Code Sections 6254(c) and (k) (including Article 1, Section 1 of the CA Constitution),
4 6254.3, 6254.21, and 6255(a), without limitation.” Riskin Decl. Ex. 22. Riskin objected to these privilege
5 assertions, argued that they did not apply, and asked HPOA to reconsider the assertions. Riskin Decl. Ex.
6 23. HPOA did not respond. Riskin Decl. ¶ 47.

7 None of the exemptions HPOA claims supports its blanket refusal to provide contact information.

8 First, section 6254(c) exempts “personnel, medical, or similar files” from production in response to
9 CPRA requests. “The purpose of the exemption is to ‘protect information of a highly personal nature
10 which is on file with a public agency . . . [to] typically apply to public employee’s personnel folders or
11 sensitive personal information which individuals must submit to government.’” *San Gabriel Tribune v.*
12 *Superior Court* (1983) 143 Cal.App.3d 762, 777. The vast majority of the assessed properties in the
13 Business Improvement District are, as the name suggests, businesses. Business contact information is not
14 a personnel, medical, or similar file.

15 Section 6254(c) is modeled on the exact same language of Exemption 6 to the Freedom of Information
16 Act. *See* 5 USC § 552(b)(6). As FOIA recognizes under the same exemption, “corporations, businesses
17 and partnerships have no privacy interest whatsoever under Exemption 6.” *Wash. Post Co. v. Dep’t of*
18 *Agric.* (D.D.C. 1996) 943 F. Supp. 31, 37 n.6; *see also FCC v. AT&T, Inc.* (2011) 562 U.S. 397, 403
19 (“‘[p]ersonal’ ordinarily refers to individuals” and that the word is not used to “refer[] to corporations or
20 other artificial entities”); *Sims v. CIA* (D.C. Cir. 1980) 642 F.2d 562, 572 n.47 (“Exemption 6 is applicable
21 only to individuals.”).

22 Even if there are assessed residential properties in the district, the CPRA does not provide a universal
23 exemption for home addresses. In fact, the CPRA provides for protection of home addresses for specific
24 classes of persons listed in Government Code §§ 6275-6276.48. These specific protections would be
25 superfluous if all residential addresses were exempt under the CPRA. Moreover, HPOA admits that these
27 addresses are publically available—they just seek to create the roadblock of having Riskin go to the
28 Assessor’s office to compile the list himself. Moreover, this contact information is available to all other

1 assessed owners upon request to HPOA. Riskin Decl. ¶ 41.

2 *Second*, section 6254(k) provides an exemption for records that are “exempted or prohibited pursuant
3 to federal or state law.” HPOA bases this assertion on Article 1, Section 1 of the state constitution, which
4 provides that all “people” have inalienable rights, including “life and liberty, acquiring, possessing, and
5 protecting property, and pursuing and obtaining safety, happiness, and privacy.” This exemption is
6 inapplicable for the same reasons Section 6254(c)’s exemption does not apply.

7 *Third*, section 6254.3 provides an exemption for “home addresses, home telephone numbers, personal
8 cellular telephone numbers, and birth dates of all employees of a public agency.” The assessed property
9 owners are not employees of HPOA and HPOA is not a public agency.

10 *Fourth*, section 6254.21 provides certain protections against posting certain elected officials’ home
11 addresses on the Internet with an intent “to cause imminent great bodily harm that is likely to occur.”
12 Riskin’s request does not relate to elected officials, and even if there were elected officials among the
13 thousands of addresses, this exemption would not support HPOA’s blanket withholding.

14 *Fifth*, section 6255(a) provides an exemption where the withholding entity demonstrates that “the
15 public interest served by not disclosing the record clearly outweighs the public interest served by disclose
16 of the record.” HPOA refused to even attempt to make that demonstration to Riskin. As Riskin has
17 demonstrated, there is a public interest in lobbying the business owners to disestablish or not renew the
18 BID. Further, the fact that this information is available to property owners upon request from HPOA, or
19 from the Property Assessor, demonstrates that this is not private information.

20 Accordingly, Riskin requests that this Court find that HPOA violated the CPRA and require it to
21 produce the requested contact information.

22 **V. HPOA’s Existing CPRA Policies Are Adequate to Deal with Any Concerns regarding the**
23 **Volume of CPRA Requests**

24 Throughout this litigation, HPOA has made much of the volume of Riskin’s CPRA requests. In fact,
25 HPOA asserts that it instituted the email-exemption-policy and amended its contract with Andrews to
27 remove HPOA’s ownership of Andrews’ work product to address HPOA’s concerns about the volume of
28 CPRA requests. Strugar Decl. Ex. 1 (Morrison Tr. 52, 100).

1 But HPOA's existing CPRA policies and practices that are not challenged in this lawsuit are more
2 than sufficient to deal with any alleged burdensome volume of CPRA requests. For one, HPOA appears
3 to adhere to a strict sequential processing of CPRA requests. Riskin Decl. ¶ 60, Exs. 26-27. HPOA even
4 encourages requestors to "prioritize their requests in the desired order." Riskin Decl. Ex. 26. In addition
5 to this policy, or perhaps as a result of it, HPOA often takes many months to respond to CPRA requests.
6 Riskin Decl. ¶ 60. Riskin does not challenge either of these policies or practices.

7 HPOA's sequential processing policy addresses any concerns related to the volume of Riskin's
8 requests. HPOA only handles one request at a time, so if Riskin or anyone else makes numerous requests,
9 the later ones will simply take longer for HPOA to process. This one-at-a-time policy means HPOA only
10 deals with only one request at a time no matter the volume. One request at a time cannot overwhelm
11 HPOA. HPOA's lengthy delays in processing Riskin's CPRA requests demonstrate that HPOA adheres
12 to its policy.

13 CONCLUSION

14 For the foregoing reasons, Riskin respectfully requests that the Court issue writs of mandate to HPOA
15 setting aside HPOA's email production policy as *ultra vires* and ordering HPOA to produce the requested
16 records.

17
18 Dated: December 29, 2017

Respectfully submitted,

19
20 _____
21 Matthew Strugar
22 Attorney for Petitioner
23
24
25
26
27
28